2000

State of Utah v. Joseph Evan Bodily : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH and
JUDY E. BODILY,
Plaintiffs and Appellants,

-v-

JOSEPH EVAN BODILY,
Defendant and Respondent.

Case No. 14386

APPELLANT'S BRIEF

Appeal from the District Court of Weber County, State of Utah, the Honorable Calvin Gould, presiding.

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APPELLANT'S BRIEF

STATEMENT OF NATURE OF CASE

The Plaintiffs-Appellants, State of Utah, and Judy E. Bodily appeal from an order on an order to show cause holding that child support assigned to the State of Utah by a welfare recipient is dischargeable in bankruptcy.

DISPOSITION IN THE LOWER COURT

The Appellants brought an Order to Show Cause against the Respondent for a judgment of back child support assigned to the State of Utah by a welfare recipient. As a defense thereto, the Respondent presented that said debt was included in a bankruptcy petition and was therefore discharged at the completion of the bankruptcy proceedings.

The lower court held that that child support assigned to the State was dischargeable in bankruptcy.

RELIEF SOUGHT ON APPEAL

Appellants seek reversal of the lower court's order and memorandum decision which hold that assigned child support debts are dischargeable and seek that this case be remanded for a judgment of the entire amount claimed owed under the bankruptcy petition as well as the judgment granted by the court.

STATEMENT OF FACTS

The plaintiff, Judy Bodily, divorced the defendant, Joseph E. Bodily, on July 13, 1973. The court ordered the defendant to pay $40.00 per month child support for two children from July, 1973 until January, 1974. In January, 1974 support was increased to $60.00 per month per child.

In June, 1974 the defendant filed bankruptcy. The defendant listed the arrearage for child support as being a dischargeable debt but did not notify the State of Utah, as a creditor, of the petition for bankruptcy. The State was a valid creditor because Mrs. Bodily was on public assistance from July, 1973 until the time of the order to show cause here involved. The defendant was discharged in bankruptcy on March 14, 1975. Between July, 1973 and January, 1975 the defendant had accumulated an arrearage of $2,595.00 for unpaid child support. The defendant only paid $45.00 in support to the Clerk of the Court during that time period.

The State of Utah filed an Order to Show Cause against the defendant in June, 1975 to obtain judgment for the arrearages of $2,595.00. The defendant contends that the State is barred from

obtaining a judgment on the child support arrearage which accumulated between July, 1973 and the date of bankruptcy. The State contends that child support is not dischargeable in bankruptcy and thus is entitled to judgment.

ARGUMENT

POINT I

A FATHER'S DEBT FOR CHILD SUPPORT IS NOT DISCHARGED IN BANKRUPTCY

As indicated by Judge Gould in his Memorandum Decision of January 20, 1976 (R-48) Article I, Section 8 of the United States Constitution reserves to the Congress of the United States the power to establish laws on the subject of bankruptcy. A look at those laws will indicate that support money for children owed under State law or court order is not dischargeable.

11 U.S.C. 35 (a)(2) states as follows:

> "(a) A discharge in bankruptcy shall release a bankrupt from all of his provable debts, whether allowable in full or in part, except such as... (2) are liabilities for obtaining money or property by false pretenses or false representations, or for willful and malicious injuries to the person or property of another, for alimony due or to become due, or for maintenance or support of wife or child." (Emphasis added).

Implementing this statutory provision is Rule 17 (a)(7) of the Bankruptcy Act which says:

> "A discharge in bankruptcy shall release a bankrupt from all of his provable debts, whether allowable in full or in part...

except such as are for alimony due or to become due, or for maintenance or support of wife or child."

As early as 1901, the United States Supreme Court held in Audubon v. Shufeldt, 181 U.S. 575, 21 S.Ct. 735, 45 L.Ed, 1009 (1901) that a claim for alimony due to a divorced wife is not a debt within the meaning of 11 U.S.C. 35, and on that ground as well as under the express provision of that section is not released by the bankrupt's discharge. Immediately following this decision, the Supreme Court entertained the question of child support. In Dunbar v. Dunbar, 190 U.S. 340, 23 S.Ct. 757, 47 L.Ed. 1084, the court held that a voluntary agreement to support children was non-dischargeable.

Since the afore-mentioned cases, numerous decisions have been handed down from circuit courts, district courts, and bankruptcy courts implementing these holdings of the U. S. Supreme Court. Through statutes, rules, and court decisions the non-dischargeability of support debts for children and wives has been upheld.

Perhaps the case of Fernandes v. Pitta, 47 C.A. 2d 248, 117 P.2d 728, a California state court case, presents the reason for these laws. In essence, the holding is the following though not a direct quote from the case:

> The rule that liability for support of wife or children, even though reduced to judgment is not provable in a bankruptcy proceeding, so as to release bankrupt from liability, is based on public policy to place obligations of support of wife or children on husband or parents so as to relieve society of those burdens.

The Utah Supreme Court has also entertained this issue, though indirectly. Harmon v. Harmon, 26 Utah 2d 436, 491 P.2d 231 (1971) contains the following language and footnote.

> "In order to carry out the important responsibility of safeguarding the interests and welfare of children, it has always been deemed that the courts have broad equitable powers. To accept the plaintiff's contention that an adjudged arrearage is tantamount to a judgment in law, would in the long run tend to impair rather than to enhance the abilities of both the plaintiff and the court to accomplish the desired objective... For the foregoing reasons decrees and orders in divorce proceedings are of a different and higher character than judgments in suits at law; and by their nature are better suited to the purpose of protecting the interests and welfare of children.[3]"
>
> ***
>
> [Footnote]
>
> "[3] In addition to enforcement by the court's equitable powers, they are not dischargeable in Bankruptcy, 11 U.S.C.A. Sec. 35."

Thus, it is clearly seen that the Utah Supreme Court also recognizes the holdings presented in this argument. This gives support to the oft held position, that State courts must give credence to Federal decisions which pre-empt State law.

Therefore, child support payments are non-dischargeable in Bankruptcy proceedings.

POINT II

WHETHER THE PERSON TO RECEIVE THE SUPPORT PAYMENTS IS A STATE AGENCY UNDER THE PUBLIC ASSISTANCE PROGRAM OR THE NATURAL PARENT MAKES NO DIFFERENCE AS TO DISCHARGEABILITY.

The question now raised by this appeal is whether support assigned to the State of Utah retains its character as "child

support" and thus is non-dischargeable as well. Referring once again to Judge Gould's Memorandum Decision (R-48) the statement is made that the intention of Congress was to make the debt to a public agency dischargeable.

Appellants feel that the lower court did not recognize the important difference between support for children specifically exempted and other debts. It is Appellants position, that an assignment to receive said payments from the obligor does not work a difference on the nature of said payments but that they retain their character as support payments if they are received by the State.

About the time of the filing of the Respondent's petition in bankruptcy, Congress enacted the Social Security Amendments of 1974, Pub.L. No. 93-647, 88 Stat. 2337 (93rd Cong., 2d Sess. 1974) which spelled out in plain language the position of Congress on this issue. As a part of those amendments, 42 U.S.C. §460 (c)(5) provides that each applicant under the AFDC program (Aid to Families with Dependent Children), as a condition of eligibility therefore,

> "...assign to the State any rights to support from any other person such applicant may have (1) in his own behalf or in behalf of any other family member for whom the applicant is applying for or receiving aid, and (ii) which have accrued at the time such assignment is executed..."

Further, 42 U.S.C. 456 (b) states:

> "[a] debt which is a child support obligation assigned to a State under [42 U.S.C. §602 (a)(26)] is not released by a discharge in bankruptcy under the Bankruptcy Act." (Emphasis added).

The recent decision from the Circuit Court of Appeals for the Ninth Circuit, In the Matter of Johnnie Williams, whose wife is Mytris Gene Williams, vs. Department of Social and Health Services, State of Washington. ____F.2d____, decided January 20, 1976 (9th Circuit, 1976) makes the following holding regarding the application of 42 U.S.C. 456 (b) above:

> "Although this amendment, effective July 1, 1975, should control future actions under state statutes seeking to collect accrued unpaid child support, it is not dispositive of this appeal. However, the decision we reach is in accord with and may properly take cognizance of this recent declaration of Congressional intent. Cf. Wetmore v. Markoe, 196 U.S. 68, 76-77, 25 S.Ct. 172, 175 (1904). For we hold that the recoupment debt created by RCW 74.20A. 010 et. seq. is a debt for maintenance or support exempt from discharge in bankruptcy under 11 U.S.C. §35 (a)(7). (Emphasis added.)

The above Washington case was, as here, filed and decided before the new amendments officially went into effect. But not only did the 9th Circuit Court of Appeals hold that amounts owed prior to the effective date of the above amendment owed to the Department of Social and Health Services were non-dischargeable, but the amendment is dispositive of all future situations. Here, in Utah, the District Bankruptcy Court made the same determination on February 14, 1975 in In re Riley. A copy of this decision is a part of the record between Pages R-37 and R-38.

Appellants feel that Respondent purposely misled the state district court in its interpretation of In re Riley which this office prosecuted before Bruce Jenkins, Judge of the Bankruptcy

Court. Therefore, an explanation is in order.

In Riley, id., the husband and wife separated for approximately 21 months. During that time, Mr. Riley did not support his wife or child in any manner. There was no temporary support orders and no divorce action was instituted. The Rileys later reconciled, and filed a joint bankruptcy petition.

Because there was no support order from a court of law, Judge Jenkins was required to apply Utah law in determining Mr. Riley's support obligation for the 21 month period. He turned to Utah Code Annotated §78-45-7 1953(as amended) which sets forth certain criteria in determining actual liability for support. Though the State feels U.C.A. §78-45-7 is for prospective payments only from the date of a hearing on the matter, Judge Jenkins applied those criteria for the 21 month period in question to see what Mr.Riley's child support obligation and liability was under Utah law. He held that of the $2,900.00 expended by the Utah State Department of Social Services, only $700.00 could be considered support for the wife and child as per his obligation. The difference between the $700.00 and $2,900.00 was solely an overexpenditure by the Department as per its own regulations having nothing to do with Mr. Riley's support obligation.

For example, a grant for two people under the "welfare" program is $199.00. However, a court might order $75.00 per month child support and $50.00 per month wife support. Thus, the difference between the $199.00 and the $125.00 as ordered by the

the court is an overpayment not charged to an absent father.

Therefore, Respondent's statement that Judge Jenkins penned figure of $700.00 means that some of the child support money is dischargeable and some isn't is a fallacious reading of the entire matter. Thus, the language of the order states as cited in Respondent's memorandum (R-32):

> "That it be ordered that the debt created by Kathleen G. Riley's receipt of AFDC assistance to the extent of $700.00 is a non-dischargeable debt in Bankruptcy under Sec. 17 (a)(7) of the Bankruptcy Act."

Thus, the court's order did not hold, as Respondents claim, that all of the assistance given Mr. Riley's family was "child support", but that under Utah law only $700.00 of the total assistance was Mr. Riley's liability and obligation. That child support liability was termed "non-dischargeable." The criteria used to determine the amount owed, as alluded to previously is U.C.A. §78-45-7:

> "When determining the amount due for support the court shall consider all revelant factors including but not limited to:
> (1) the standard of living and situation of the parties;
> (2) the relative wealth and income of the parties;
> (3) the ability of the obligor to earn;
> (4) the ability of the obligee to earn;
> (5) the need of the obligee;
> (6) the age of the parties;
> (7) the responsibility of the obligor for the support of others."

The present case involves a court order under a divorce decree. The above seven criteria are not needed in determining the amount owed because of the court ordered support payments as indicated in the divorce decree (R.22). The entire amount claimed

in Appellant's Order to Show Cause was a sum certain determined from the court order. Therefore, as per the Federal law, that entire amount is non-dischargeable.

Not only does Federal law compel the above conclusion, but the State of Utah has enacted U.C.A. §55-15-32 confirming that belief. It states as follows:

> "Public assistance provided under this act shall not be assignable, at law or in equity, and none of the money paid or payable under this act shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law." (Emphasis added).

Though Respondents attempt to belittle the enactment of this provision as "in contravention of Federal law" and thus void, Appellants point out that when state laws are in harmony with Federal laws the state laws should stand. In the present case, Federal statutes and decisions uphold the position expressed in U.C.A. §55-15-32. Therefore, this court should give credence to the intent, purpose, and meaning of it in determining this appeal.

Further language of the 9th Circuit decision Williams, supra, points out the flaw in Respondent's position:

> "The bankrupt and the opinion of the Referee in Bankruptcy adopted by the district court argue essentially that the State of Washington has attempted to invest itself with the character and quality of the childrens' relationship to the bankrupt by "statutory fiat," and that the true origin of the recoupment debt is the independant obligation of the Department to provide AFDC payments to all eligible individuals rather than the bankrupt's obligation to provide support...
>
> * * *
>
> We disagree. A debt's underlying nature, rather than its form, is the central concern in determining

whether it is discharged. Cf. Pepper v. Litton, 308 U.S. 295, 305-06, 60 S.Ct. 238, 244-45 (1939); Martin v. Rosenbaum, 329 F.2d 817, 820 (9th Cir. 1964); Poolsman v. Poolsman, supra. The Department's duty to provide $1,864.80 in AFDC funds for the support of the bankrupt's minor children did not arise in a vacuum. 42 U.S.C. §602 (a)(7) requires state agencies determining need and eligibility for AFDC support to

> "...take into consideration any other income and resources of any child or relative claiming aid to families with dependent children..."

Had the bankrupt met his common law and statutory support obligation reflected in the divorce court's support order, the need of his offspring and the level of AFDC payments which the Department was obligated to make to those dependents would have been correspondingly reduced. See King v. Smith, supra, at 319-20, 88 S.Ct. at 2134-35. Therefore, the Departments' payments, while mandated by statute and regulations, were substantially in lieu of the bankrupt's support obligations.

The fact that the funds recovered flow to state and federal treasuries[11] rather than directly to the bankrupt's children does not alter their character as obligations for maintenance or support. Under RCW 74.20A 030 the Department is "subrogated" to the welfare recipient's right to support. That doctrine of subrogation results in a "...shift of the original debt from the creditor to the [subrogee] who steps into the creditor's shoes." Putnam v. Commissioner of Interal Revenue, 352 U.S. 82, 85 77 S.Ct. 175, 176 (1956). E.g., Compania Anonima Venezolana de Nav. v. A.J. Perez Exp. Co., 313 F.2d 692, 696 (5th Cir. 1962); Allen v. See, 196 F.2d 608, 610 (10th Cir. 1952). As such, the debt to the Department is not a debt different than the bankrupt's obligation to his dependents although it is payable to a different party.

* * *

We hold, therefore, that RCW 74.20A 010 et. seq.'s recoupment debt is essentially an obligation for maintenance or support exempt from discharge in

> bankruptcy under 11 U.S.C. §35(a)(7). The judgment of the district court requiring repayment of $397.81 to the bankrupt and enjoining further attempts to enforce the debt for the balance of the child support arrearages outstanding is reversed, and the trial court is directed to enter judgment in accordance with this opinion." (Emphasis added).

Utah Code Annotated §55-15-32 states exactly the same as the above, in meaning. Though the Williams case, supra, involves a direct appeal from the district and bankruptcy courts, the question determined is the same as that arising in this instant case.

CONCLUSION

Congressional intent in enacting 42 U.S.C. 656, Utah Bankruptcy Court's decision of In re Riley, as well as Williams, supra, and Utah's acknowledgment of Federal law in Harmon, supra, urge this court to reverse the district court's order and to remand for judgment of the proper amount.

Respectfully submitted,

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